

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B04 – PLR-136867-10
Date:
January 13, 2011

Re:

Legend:

Mother	=
Spouse	=
Residence	=
Daughter	=
Trust	=
Date 1	=
Date 2	=
Date 3	=
Year	=
Modification	=
Amendment and Restatement	=
<u>Y</u>	=
<u>Z</u>	=

Dear :

This letter responds to your letter requesting rulings under §§ 2702 and 2501 of the Internal Revenue Code with respect to the proposed amendment and restatement of a trust.

The facts submitted are as follows:

Prior to Date 1, Mother owned Residence outright. On Date 1, Mother deeded her interest in Residence to Trust. Trust provides that Mother would retain a term interest to possess and occupy Residence for y years.

Under Article V, Section A of Trust, if Mother dies before the expiration of the y year period, Mother's spouse (Spouse), if then living, will have the right for life to occupy Residence and to receive the greater of all the income of Trust or the annual annuity amount (if Trust has been converted to an annuity trust). Under Article V, Section B, if Mother dies before the expiration of the y year period, and Spouse is not then living, the Trust assets will pass to Mother's issue as specified under Article V, Section D. Article V, Section C provides that, upon the expiration of the y year period, if Mother is still living, Trust will continue for the benefit of Mother's issue, as provided. Under Section C, Trust will terminate on the later to occur of Mother's death or the death of Spouse and be distributed to Mother's issue as specified under Article V, Section D. Article V, Section D provides that, unless otherwise agreed to by the income beneficiaries, the trust estate will be sold and held in trust as provided for under this section.

Mother serves as the trustee of Trust. Trust was intended to qualify as a qualified personal residence trust (QPRT) as described in § 25.2702-5(c). Mother reported the transfer of Residence to Trust on a Form 709, United States Gift (and Generation-Skipping Transfer) Tax return, for Year. Mother is currently married to Spouse. Mother has one adult child, Daughter.

On Date 2, Mother, in her capacity as trustee of Trust, with the joinder and consent of Daughter and Spouse, executed Modification to Trust. Modification is effective on Date 3. Modification provides that upon the expiration of the y year period, each of Mother's then living children is granted the power to appoint an equal share of the corpus of the trust estate to themselves, or by unanimous agreement, they may direct the trustee to amend and restate the terms of Trust so as to provide a term interest to Mother, Spouse, or both, as a gift by Mother's children.

Trustee and Daughter intend to amend and restate Trust (Amendment and Restatement), to be effective on Date 3, as follows. Article I, Section A provides that Daughter exercises her power of appointment to grant a z year term interest to Mother to possess and occupy Residence. Article V, Section C provides that upon expiration of the z year term interest and unless Daughter agrees to an extension, the term interest will expire, and the trust estate will be distributed to Daughter. Article V, Section A provides that upon the death of the term interest holder during the z year term, if Spouse survives the term interest holder, the remaining portion of the term holder's term interest will pass to Spouse, and Spouse shall have the continuing right to occupy Residence for the balance of the term and to receive the greater of all the income of Trust or the annual annuity amount during the term. Article V, Section B provides that if Spouse does not survive the term interest holder, the trust estate will be distributed to Daughter.

You have requested the following rulings:

1. Sections 2702(a)(1) and 2702(a)(2) will not apply to the proposed Amendment and Restatement.
2. Upon executing Amendment and Restatement, Daughter will be transferring a term interest in Residence to Mother by gift within the meaning of § 2501.

LAW AND ANALYSIS

Section 2501(a) provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year.

Section 2511(a) provides that the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect and whether the property is real or personal, tangible or intangible.

Section 2514(b) provides that the exercise or release of a general power of appointment shall be deemed the transfer of property by the individual possessing the power.

Section 2514(c) provides that the term “general power of appointment” means a power which is exercisable in favor of the individual possessing the power, his estate, his creditors, or creditors of his estate.

Section 2702(a)(1) provides that, solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in § 2701(e)(2)) shall be determined as provided in § 2702(a)(2).

Section 2702(a)(2) provides that the value of any retained interest that is not a qualified interest is treated as being zero. The value of any retained interest that is a qualified interest is determined under § 7520.

Section 2702(a)(3)(A)(ii) provides that § 2702(a) shall not apply to any transfer if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust.

Section 25.2702-5(a)(1) of the Gift Tax Regulations provides, in part, that § 2702 does not apply to a transfer in trust meeting the requirements of that section. A transfer in trust meets the requirements of the section only if the trust is a personal residence trust (as defined in § 25.2702-5(b)). A trust meeting the requirements of a qualified

personal residence trust (as defined in § 25.2702-5(c)) is treated as a personal residence trust.

Section 25.2702-5(c)(1) provides that for purposes of § 2702(a)(3)(A)(ii), a qualified personal residence trust is a trust meeting all the requirements of the section. These requirements must be met by provisions in the governing instrument, and these governing instrument provisions must by their terms continue in effect during the existence of any term interest in the trust.

Section 25.2702-5(c)(5) provides that, in general, except as otherwise provided in § 25.2702-5(c)(5)(ii) and § 25.2702-5(c)(8), the governing instrument of a qualified personal residence trust must prohibit the trust from holding, for the entire term of the trust, any asset other than one residence to be used or held for use (within the meaning of § 25.2702-5(c)(7)(i)) as a personal residence of the term holder. Under § 25.2702-5(c)(5)(ii), the trust may hold certain assets listed in that section in addition to the personal residence.

Section 25.2702-5(c)(2)(i) provides that a personal residence of a term holder is either the principal residence of the term holder (within the meaning of § 1034); one other residence of the term holder (within the meaning of § 280A(d)(1) but without regard to § 280A(d)(2)); or an undivided fractional interest in either.

Section 25.2702-5(c)(2)(ii) provides that a personal residence may include appurtenant structures used by the term holder for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

Section 25.2702-5(c)(2)(iii) provides that a residence is a personal residence only if its primary use is as a residence of the term holder when occupied by the term holder. A residence is not used primarily as a residence if it is used to provide transient lodging and substantial services are provided in connection with the provision of lodging (e.g., a hotel or a bed and breakfast). A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence.

Section 4.01(55) of Rev. Proc. 2011-3, 2011-1 I.R.B. 111, 119, provides that rulings will not ordinarily be issued on whether a trust with one term holder satisfies the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) to be a QPRT. Rev. Proc. 2003-42, 2003-1 C.B. 993, provides sample trust provisions for QPRTs. The Service will recognize a trust as meeting all of the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) if the trust instrument is substantially similar to the sample in section 4 of Rev. Proc. 2003-42 and the trust operates in a manner consistent with the terms of the trust instrument and is a valid trust under applicable local law.

Accordingly, based on the facts submitted and the representations made, we conclude that §§ 2702(a)(1) and 2702(a)(2) will not apply to the proposed Amendment

and Restatement, as long as the proposed Amendment and Restatement, pursuant to which a term interest in Residence will be transferred from Daughter to Mother, is substantially similar to the sample in section 4 of Rev. Proc. 2003-42 and the amended and restated trust operates in a manner consistent with the terms of the trust instrument and is a valid trust under applicable local law, and if Residence qualifies as a personal residence as defined in § 25.2702-5(c)(2). We also conclude that, upon executing Amendment and Restatement, Daughter will be transferring a term interest in Residence to Mother by gift within the meaning of § 2501.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning whether the transfer of a term interest in Residence to Mother, pursuant to the Amendment and Restatement, would result in Residence being included in the gross estate of Mother under § 2036.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of provides that it may not be used or cited as precedent.

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes

cc: